

## **FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR THURSDAY, MARCH 25, 2010.**

Lara Roholt Westdorp, Chair, called to order a meeting of the Frederick County Board of Appeals ("Board") for Thursday, March 25, 2010 at 7:00 p.m. Present were Ronald Peppe, Sr., John Clapp, Sean Michalski, and Alan Duke. Also present were Michael Chomel, Senior Assistant County Attorney, and Planning Division staff Larry Smith, Zoning Administrator, Rick Brace, Principal Planner II, and Erica Cooke, Recording Secretary.

*Official Minutes of the Board of Appeals' meetings are kept on file in the Planning Division.*

Ms. Roholt Westdorp stated the rules and procedures for the evening and swore in all persons who expected to testify at the meeting.

### **Approval of Minutes**

On a motion from Mr. Duke, seconded by Mr. Clapp, the Board unanimously approved the minutes of January 28, 2010, February 1, 2010, and February 25, 2010.

### **Cases**

#### **B-08-20      Craig Case (Robert & Barbara Craig) - Actions per Court Proceedings Not Inconsistent with the Court Findings**

The Circuit Court remanded the case to the Board of Appeals for proceedings not inconsistent with the Court's ruling. The Applicant requested the Board hear the case and make a decision consistent with the Court's ruling. Ms. Kathy Mitchell, counsel for the Frederick County Planning Commission, informed the Board that the County had appealed the Circuit Court ruling to the Maryland Court of Special Appeals and asked that the Board postpone their decision until the appeal process had been exhausted.

Ms. Roholt Westdorp moved to grant the County's request for a postponement of the Board's findings until the Maryland Court of Special Appeals had ruled on the case. The motion failed to gain a second.

Mr. Clapp moved to continue the case to the April 22, 2010 hearing of the Board to allow for both parties to present their arguments and relevant material, including a discussion by Ms. Mitchell on the issue of 'tolling', seconded by Mr. Peppe Sr. On a motion from Mr. Michalski, seconded by Mr. Duke, the Board agreed to lay Mr. Clapp's motion on the table until after Ms. Craig presented her materials for the evening (4:1:0, Nay- Roholt Westdorp).

Ms. Craig was granted four (4) minutes to speak.

On a motion from Mr. Michalski, seconded by Mr. Duke, the Board unanimously agreed to pick up Mr. Clapp's motion from the table. Mr. Clapp's motion passed (4:1:0, Nay- Michalski).

## **Discussion/Decision on Proposed Bylaw Changes**

On a motion from Mr. Michalski, seconded by Mr. Peppe Sr. the Board unanimously approved the following changes to their Bylaws Section III. Filings of Applications:

Subsection H. change the number "15" to "21"

Subsection H. change the number "5" to "10"

On a motion from Mr. Michalski, seconded by Mr. Duke the Board unanimously approved the following changes to their Bylaws Section III. Filings of Applications:

Subsection A. add the phrase "renewal of zoning certificate," after the word 'variance' AND Section V. Hearings and Meetings:

Subsection (A). insert the phrase "renewal of zoning certificate," after the word 'variance'

Subsection (E) Procedure.

Strike the sentence following "E. Procedure:"

Replace subsection (A) with "(a) The hearing of special exception, variance, and renewal of zoning certificate cases shall be conducted in the following manner:"

Strike the sentence immediately preceding '(B)' which states "hearing of administrative appeals shall be conducted in the following manner:"

Replace subsection (B) with "(b) The hearing of administrative appeals shall be conducted in the following manner:"

Subsection (I) add the phrase ", renewal of zoning certificate," after the word 'variance'

On a motion from Mr. Clapp, seconded by Mr. Peppe Sr. the Board unanimously approved the following changes to their Bylaws Section X. Definitions:

Subsection B reassigned as section "C"

Subsection B now reads: "B. Groups. Groups recognized by the Chair shall mean any group that has provided to the Board of Appeals, by close of business one day prior to the hearing in which the group will testify, any of the following: a copy of its bylaws or articles of incorporation, a list of its officers w/ contact information, or a copy of the latest minutes of the group's meeting.

On a motion from Mr. Duke, seconded by Mr. Michalski the Board unanimously approved the following changes to their Bylaws Section V.E. Procedure, Page 5, first paragraph - take the last sentence out and make a new paragraph to read "Cross examination of witnesses in any adjudicative proceeding before the Board shall be permitted. The right to cross-examine witnesses shall be extended only to those persons who are parties to the proceedings before the Board or who have a cognizable interest in the outcome of the proceedings as determined by the Chair. A

person or party wishing to cross examine a witness shall make the request prior to or immediately after the time that the witness has concluded his or her testimony, and the failure to make such a timely request may be deemed a waiver of the right to cross examine as determined by the Chair. The scope of any cross examination shall be reasonable and may be limited, as determined by the Chair, so as to permit a full and true disclosure of the facts, having due regard to the circumstances of each particular case, the nature of the proceedings, and the character of the rights which may be affected by it."

Mr. Michalski moved to add a written Dissention to the case file of B-09-16, seconded by Mr. Duke, that failed after significant debate (2:3:0, Nays- Roholt Westdorp, Clapp, Peppe Sr.).

On a motion from Mr. Michalski, seconded by Mr. Peppe Sr. the Board unanimously approved the following changes to their Bylaws Section V.I. Decision: On the seventh line add the phrase "or their authorized designee" following the word 'case' so that the line now reads "members of the Board who hear the case, or their authorized designee, usually at the regularly...".

Being no further business, the meeting was adjourned at 9:02 p.m.

Respectfully Submitted,

Erica Cooke  
Recording Secretary

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Lara Roholt Westdorp, Chair